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No. 89-1290

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

ROBERT R. FREEMAN, *et al.*,
Petitioners,

v.

WILLIE EUGENE PITTS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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SUPPLEMENTAL BRIEF OF PETITIONERS

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The recent Fifth Circuit decision in *Flax v. Potts*, 915 F.2d 155 (1990) bears directly upon and further enhances the importance of the questions presented in the petition in this case, which is being held pending the disposition on the merits of *Board of Educ. of Oklahoma City* v. *Dowell*, No. 89-1080. The Fifth Circuit in *Flax* confronted the same two issues presented in the petition: first, whether a school district under a desegregation order can be "barred from obtaining a finding of unitariness" on the ground that "a school system cannot achieve unitary status *incrementally*" (Pet. i; 915 F.2d at 158 (emphasis added)); and, second, whether a school district that has "achieved effective desegregation . . . is nevertheless obligated to remedy the segregative effects of massive demographic changes . . . completely beyond the school district's control." Pet. i; see 915 F.2d at 161-62.

Like the First and Tenth Circuits, the Fifth Circuit answered both questions in the negative. In doing so, the court specifically recognized and rejected the Eleventh Circuit's contrary holdings in this case. Thus, after the Court disposes of *Dowell*, it should grant this petition in order to resolve the growing conflict on the discrete issues relating to the scope of federal remedial authority in a desegregation action which are presented by the decision below.

CONCLUSION

For the foregoing reasons, and those stated in the petition and in the petitioner's reply brief, the petition for a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit should be granted.

Respectfully submitted,

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